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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,549

10/27/2003

Birgit Burg

H05138/2006-249

2417

55495 7590 05/16/2007

PAUL & PAUL

2000 MARKET STREET

PHILADELPHIA, PA 19103-3229

EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1751

MAIL DATE

DELIVERY MODE

05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/694,549

Applicant(s)

BURG ET AL.

Examiner

Necholus Ogden

Art Unit

1751

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-29-2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aforementioned amended claim states the phrase "one side of each of the tabletted layers is entirely in contact with the viscoelastic phase". However, applicant does not appear to have support for said phrase, wherein applicant's states support for said phrase at page 55, lines 13-29 and page 62, lines 5-11. The examiner contends that the portions of the specification cited for support for the amended phrase only generally speak to the layers and viscoelastic

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phase such as page 55, lines 13-16, which states "For aesthetic reasons...the viscoelastic phase is surrounded by two tabletted phases." And page 62, lines 5-11 state "...viscoelastic phase between two tabletted covers..." Therefore, the examiner contends that applicant does not have support for the above listed amended claim because the specification does not teach that the "one side of each layers" is "entirely in contact" with said viscoelastic phase. At best the specification generally describes the position of the viscoelastic phase being between the tabletted layers. Appropriate corrections and/or clarification are required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacques Kamiel Thoen et al (6,548,473).

Jacques Kamiel Thoen et al disclose a multi-layer detergent tablet having both a compressed and non-compressed portion comprising, in the non-compressed portion of said multi-layered tablet, at least 0.01% of a surfactant (col. 14, lines 54061) and in particular anionic surfactants such as linear alkyl benzene sulfonate (col. 21, lines 32-42). Jacques Kamiel Thoen et al further disclose the inclusion of builders in an amount from 10-80% by weight (co. 27, lines 41-50) and the at least one non-compressed portion of the detergent tablet is equal to or less than the compressed mold portion of the tablet (col. 51, lines 11-25). Jacques Kamiel Thoen further teaches that the viscosity of an ingredient in the non-compressed phase, which comprises surfactants, gallants, builders and other adjunct material, is 50 to 100,000 cps (column 12, lines 60-63).

Jacques Kamiel Thoen et al do not specifically teach that said phase is a viscoelastic phase having storage modulus of between 40,000 and 800,000 Pa and a phase shift in the range of 0 to 30 degrees Celsius.

It would have been obvious to one of ordinary skill in the art to expect the compositions of Jacques Kamiel Thoen et al to comprise a storage modulus or phase shift as claimed in the non-compressed layer because Jacques Kamiel Thoen et al teaches the use of alkyl benzene sulfonates as surfactants that may be used in the non-compressed phase of the tablet composition and the skilled artisan would expect similar properties, in the absence a showing to the contrary. Furthermore, the court held "it is not necessary in order to establish a prima facie case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant," and concluded that here a prima facie case was established because "[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties." In re Dillon, 919 F.2d 693, 16 USPQ2d 1901 (Fed. Cir. 1990).

### ***Response to Arguments***

2. Applicant's arguments filed 3-29-2007 have been fully considered but they are not persuasive.

Applicant argues that Thoen et al do not teach or suggest a three-layered tablet with a viscoelastic phase placed between the two-tablet layers.

3. The examiner contends and respectfully disagrees because Thoen et al specifically teach that said detergent composition is in the form of a multilayered tablet (column 14). Thoen et al specifically discloses that said tablet is prepared by having a compressed portion in a plurality of molds. The plurality of molds is filled with a non-compressed, non-encapsulating portion (col. 52, lines 47-54) using a modified tablet

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press comprising modified upper and lower punches. The upper and lower punches of the modified tablet press are modified such that the compressed portion provides one or more indentations, which form the molds to which the one non-compressed portion is delivered (col. 51, lines 54-55). Therefore, it can be seen that Thoen et al teaches that said multi-layered tablet is formed with at least three layers and said layers comprise compressed layers and a non-compressed layers. Accordingly, the claims are suggested by the prior art of record.

4. Applicant further argues that Thoen do not suggest a viscoelastic phase tablet.

5. The examiner contends that the term "viscoelastic", according to applicant's specification, is a phase that exhibits both viscous and elastic behavior (see page 3, lines 31-33). Therefore, as applicants working examples employ a plethora of ingredients that constitute the "viscoelastic phase", Thoen clearly suggest many of these ingredients, when combined would clearly read on a viscoelastic phase as broadly defined by the claims and suggested by the specification.

Applicant further argues that Thoen does not suggest tableted layers in contact with a viscoelastic phase.

The examiner contends that Thoen clearly suggest multi-layer tablets and clearly suggest a non-compressed phase which reads on applicants viscoelastic phase, in the absence of a showing to the contrary, wherein it would have been in the purview of the artisan of ordinary skill in the art to expect the non-compressed phase and the compressed layers are in contact with one another.

*An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. \_\_\_, 2007 WL 1237837, at \*12 (2007).*

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Necholus Ogden

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Primary Examiner  
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No  
5-11-2007